

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND
COMPOUNDING PHARMACY, INC.
PRODUCTS LIABILITY LITIGATION

MDL No. 2419
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:
All Actions

PLAINTIFFS' STEERING COMMITTEE'S REPLY IN SUPPORT OF DKT 1406

On September 12, 2014, the Plaintiffs' Steering Committee filed a motion identifying the motions set for oral argument at the September 17, 2014 hearing and also noting that there was ambiguity as to whether Judge Boal would also be holding argument that day.¹ Thereafter the Tennessee Clinic Defendants filed an opposition claiming the PSC's Scheduling Motion attempted to "unilaterally add oral argument on Tennessee discovery issues before Judge Boal to the docket for the September 17 hearing on dispositive motions before Judge Zobel."²

The PSC files this brief response to address the claims made in the Tenn. Clinic Def. Response. The Scheduling Motion was merely an attempt by the PSC to give all parties notice as to the motions up for discussion at the September 17, 2014 hearing. At the August Status Conference the Court stated as follow:

I propose that all motions that are ripe for hearing by September 17th be heard on the 17th, and I would ask Ms. Johnson or somebody to give me a list of them maybe a week or so before so that I can prepare for the hearing.... And there was a misunderstanding by some counsel about hearing certain motions today...So, whatever needs to be heard please put on the list and we'll hear it.³

¹ Dkt. No. 1406 (the "Scheduling Motion").

² Dkt. No. 1407 (the "Tenn. Clinic Def. Response") (emphasis in original).

³ August 7, 2014 Hearing Tr. at P.41-42.

Based on this instruction, the PSC believed the Court wanted hearing on *all* motions ripe for review, not simply dispositive motions as alleged in the Tenn. Clinic Resp. In other words, the PSC believed the Court when it said *all* motions meant *all* motions.

Obviously there remains a disagreement as to whether based on the above instruction Magistrate Judge Boal intends to sit at the September 17 hearing and also hear argument on the many motions referred to her shortly after the last status conference.⁴ This was clearly noted in the Scheduling Motion where it stated:

The PSC is unaware of whether Judge Boal will also be in attendance at the oral argument on September 17, 2014. To the extent that Judge Boal will be in attendance, the PSC will supplement this motion and identify the motions it believes are ripe for argument when and if the Court indicates that Judge Boal plans on hearing arguments at the September 17, 2014 hearing.⁵

The PSC's Scheduling Motion simply attempted to provide clarity as to the motions to be heard on September 17 and in no way was an attempt to unilaterally set anything for a hearing that the Court was not already planning on addressing.⁶

Dated: September 16, 2014

Respectfully submitted,

/s/ J. Gerard Stranch, IV

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⁴ See Dkt. 1332.

⁵ Scheduling Motion at 2.

⁶ The Tennessee Clinic Defendants also objected on the grounds that some discovery motions identified as "ripe" for argument have already been argued. Dkt. 1407 at P. 3. However, Liberty (Dkt. 1317), Unifirst (Dkt. 1319), and Insight (1400) have all opined on these motions since Judge Boal's last hearing on these matters.

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Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I, J. Gerard Stranch, IV, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: September 16, 2014

/s/ J. Gerard Stranch, IV
J. Gerard Stranch, IV